BEFORE THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

Appeal No. 34 of 1905-06.

Appellants		Respondent
A. Bhima Rao and other raiyats of Holalvadi, Nanjangud Taluk	*Versus*	K. Narasimhaiya, shop-keeper, Mysore City.

Subject.

Claim respecting the occupation of Government waste or vacant land Survey No. 1 of Holalvadi village in the Nanjangud Taluk.

The facts of the case appear sufficiently from the following :—

Decision.

Survey No. 1 is a kharab or unassessed waste, being part of the bed of an old abandoned tank. It adjoins the village site. From the commencement, it was being used for such communal purposes as the storage of manure, etc. A small quantity of water sometimes stands on the low lying portion of it and it has been long used by the cattle of the village. Some years back, the applications of certain persons for the grant of the land for cultivation, seem to have been rejected after duly considering the objection taken to the same by the raiyats of the village (*vide* Amildar's report dated the 25th October 1901). In August 1900, a similar application made by one Muddappa was rejected by the Deputy Commissioner. In reporting upon that petition, the Amildar expressed the opinion that the land should not be given out for cultivation. Subsequently, there were several petitions from several individuals asking that portions of the land be given to them for building and kindred purposes. The Amildar, with the concurrence of the villagers, was in favor of the grant and submitted a recommendation accordingly. During the pendency of the correspondence on the subject, the respondent asked that the whole number be given to him for garden cultivation, for the small upset price of Rs. 20 per acre in consideration of the loss he had sustained in connection with certain other lands which in previous years he had purchased for large sums at revenue sales. The villagers objected to the grant thus applied for. The Amildar and the Assistant Commissioner nevertheless recommended the grant. They knew at the time that the villagers would be subjected to serious discomfort and inconvenience if the land were given away to an outsider for cultivation. They also knew of the existence of the previous darkhasts. In the face of this and of their belief that if put up to competition the land would realise a much higher price than the nominal price offered for it by the respondent, they chose to consider that the objection taken by the villagers should be over-ruled, and that the respondent's application should be favorably dealt with. The Deputy Commissioner in reliance upon their opinion wrote to the Revenue Commissioner recommending the grant. The Revenue Commissioner thought that the price offered was too low. He further seemed to think that the villager's objection based upon the absence of gomal was not wholly without force. Under the circumstances represented to him, however, he saw no reason to withhold the sanction applied for which accordingly he conveyed on 22nd May 1905. This sanction was passed on to the Amildar for needful action on 7th June 1905. The Amildar accepted the price from the respondent on the 16th idem, and on the same date issued to him a saguvali chit pending the assessment being fixed in due course by the Survey Department. This was done in spite of the pendancy of two petitions from one Bhima Rao, dated 21st and 25th April 1905, in which he had referred to the several previous darkhasts both from himself and from other individuals and not only protested against the grant to the respondent then under contemplation but also offered to take the land himself on the same terms as those offered by the respondent. He even asked that the land be sold by auction if it could not be given to him for an upset price. The local authorities had evidently made up their minds that the respondent should be given the land on favorable terms to the prejudice of the villagers and the exclusion of the prior darkhastdars. In this they were solely influenced by their estimate of the loss which the respondent had sustained in connection with certain other sales. The one had nothing whatever to do with the other and yet the respondent was shown a concession to which he was not reasonably entitled. As soon as the villagers became conversant of what was going on, they hastened to the Deputy Commissioner with a protest on which that officer passed the following order on the date of the saguvali chit itself. "As there appears to be something in this objection, the order already issued (*i. e.*, the order intimating the Revenue Commissioner's sanction) will be held in abeyance if not given effect to, pending inspection of the land, one day next week." This order does not appear to have been formally communicated to the respondent. The Deputy Commissioner inspected the land a few days after, *i. e.*, on the 29th June, and on the next day he passed an order as follows :—"I inspected this land yesterday and find that I was misled regarding it, as it is really required for village purposes, storage of manure, and extending the village at any future time, and that it should not have been given out for cultivation. As however orders have already been received from the Revenue Commissioner on the subject on my recommendation, I am unable to move further in the matter and the only course left is for the petitioners to apply to the Revenue Commissioner to revise his order." The Revenue Commissioner, who was thereupon appealed to, informed the petitioners (appellants) that "as the sanction for the

grant of the land for cultivation purposes was accorded from his office, they (petitioners) should appeal to Government." Hence the present appeal, immediately on the institution of which, *i. e.*, on the 5th August 1905, Government passed an order that further proceedings should be stayed and that if the respondent had been put in possession he should be directed not to interfere with the land pending the disposal of the appeal.

2. It is abundantly clear from the Deputy Commissioner's orders quoted above and from his report, that he was misled into making a serious mistake which he is anxious to see rectified. The land according to him is fit for building purposes. That was also the opinion of a former Amildar who had reported upon the antecedent darkhasts to which reference has already been made and which were ignored in dealing with the respondent's darkhast. The village is a large one and appears to stand in real and urgent need of extension. By its situation, the land in question is admirably suited for the location of such extension. The respondent's contention that another land equally eligible is readily available for the purpose, is clearly untenable as will be seen from an order passed by the Amildar on the 25th December 1900, rejecting one Narasanna's darkhast for the land (No. 164 measuring only one acre and twenty-three guntas) on the ground that there was a temple on it, and that moreover a fair was being held on it every year. It is unsatisfactory that on a ground manifestly inadmissible, the local authorities thought it proper to ignore all previous correspondence and to prefer an outsider like the respondent to both the villagers generally and the previous applicants in particular. The needs of the village failed to receive from them the consideration to which they were undoubtedly entitled. Though not ear-marked and formally set apart for communal purposes, it is obvious that no assessment was fixed on the land which, being then a kharab, was for a long time being used by the villagers for the common benefit, such as storage of manure and straw, cattle-stand, cattle-pond, etc. The higher portion is suitable for building purposes and the lower for collection of water for cattle. The correspondence shows that the latter was intended to be excluded and reserved, but even this was not done. This is not an occupied waste, and its disposal ought not to have been ordered as a routine matter and without proper enquiry. The grant is liable to be set aside on sufficient cause shown. Government are satisfied that this is a case in which authorities below did not evince a judicious discretion and that their interference is imperatively called for and should not be refused. The Deputy Commissioner himself is of that opinion and Government have no hesitation in agreeing with him. The cancelment of the grant made to the respondent so as to render possible the reservation of the land for communal purposes, is the only order which the Government consider proper under the circumstances. There were several applicants of whom the respondent was the last. A grant to the latter for an upset price much below the market value, was a proceeding for which there was no justification. A public sale was a more correct proceeding. And even this was extremely undesirable in view of the fact that a reservation was necessary in the interests of the village.

3. The respondent poses as a seriously aggrieved party in that he asserts that he has *bonâ fide* spent such a considerable sum as Rs. 1,500 on improvements. This assertion is wholly without foundation. He knew that his application was being strenuously opposed by prior applicants as well as by the villagers. On the date of the Amildar's permit itself, the Deputy Commissioner placed on record his opinion that there was something in the objection and that the matter should be further investigated. The respondent could not have been unaware of this though a formal intimation of it was somehow not sent to him. Within a fortnight of the grant, the Deputy Commissioner inspected the land and expressed his opinion against the propriety of the grant. Government decline to believe that the respondent remained in ignorance even of this. The Deputy Commissioner's report shows that up to that date, no improvements of any kind had been carried out by the respondent. Between that date and the date of the interdiction issued by Government, some little work seem to have been done by the respondent, not in good faith but in order to make out a grievance for himself. The mahazar prepared at the Sheristadar's inspection of 20th August 1905 clearly shows that beyond hurriedly getting some pits dug and plantain plants put in, at a cost of about Rs. 100, the respondent had done nothing whatever to the land by way of improvement or preparation, and that even this small cost had only been incurred by him within the preceding twenty days. The matter was *pendentelite* and the respondent at his own risk endeavoured to manufacture a claim for himself in the hope of being thus enabled to successfully resist the case made against him. There was no *bonâ fide* improvement and consequently no compensation is claimable.

4. For the foregoing reasons the grant relied upon by the respondent is cancelled, thus setting free the land for appropriation for non-agricultural purposes in the manner suggested by the Deputy Commissioner.

No. R. 10327—*R.M.* 90-05-7, *dated Bangalore, 1st February* 1906.

Copy of the above is forwarded to the Revenue Commissioner in Mysore, together with the records received with his letter No. 2140, dated the 28th August 1905.

Appeal No. 39 *of* 1905-06.

Appellant	*Versus*	Respondent
Kenchegowda, son of Boregowda of Desahalli village, Mandya Taluk		Narasaiya, shanbhog

Subject.

Appeal against the order of the Deputy Commissioner of the Mysore District, rejecting the claim of the appellant to Survey No. 74 of Desahalli village in the Mandya Taluk held to belong to Government and confirming the darkhast sale thereof to the respondent.

The facts of the case appear sufficiently from the following :—

Decision.

Land No. 74 was an assessed waste. Its total extent is one acre and thirty guntas, of which thirty guntas were dealt with as kharab owing to the existence of a disused katte on the land. It would appear that one Nanjundaiya applied for the land at the time of the Survey Settlement but that the Settlement officer ordered that the katte should be inspected after the ensuing rains before granting the land for cultivation. Nanjundaiya repeated his application in 1888 but the then Amildar rejected it on the grounds that the katte still retained a small quantity of water, that the unarable portion exceeded the arable portion and that it was fit for a sandal plantation. This reservation was not, however, made under authority nor was entered in the village accounts. In November 1900, the respondent presented a darkhast for the land. As directed by the Amildar, the land was inspected and reported upon by the shekdar who after consulting the villagers, gave it as his opinion that the katte was quite out of order and scarcely retained any water for the use of men or cattle and that there was no objection to the land being granted for cultivation. The Amildar thereupon ordered the sale of the land in due course. After publicity given in the manner prescribed by law, a sale was held on 13th January 1901 at which the respondent became the purchaser. A large number of persons were present at the sale which, however, owing to the existence of pits on the land and the costly nature of the work to be done to render the land fit for cultivation, did not attract a higher bid than Rs. 2-4-0 offered by the respondent. After making a personal inspection and satisfying himself that the sale was above-board, the Amildar confirmed the sale and issued a saguvali chit on the 10th May 1901. Several months afterwards, *i.e.*, in January 1902, the appellant complained to the then Sub-Division Officer Mr. Venkat Rao, that the sale was a fraudulent transaction, that in holding it the Amildar's previous order of 1888 had been wilfully ignored, and that the katte standing on the land was his own property having been originally constructed by one of his ancestors. He further alleged that the price realized was wholly inadequate. Mr. Venkat Rao in calling for a report directed the suspension of cultivation pending orders on the appellant's protest. The Amildar in reporting upon the case expressed the opinion that the sale having been regularly held and duly given effect to, there were no grounds for any interference with it. He also stated that the appellant had made out no title either to the land or to the katte on it, and that his (appellant's) cupidity had been excited by the costly improvements which the purchaser had effected after he had obtained possession in pursuance of the sale. Mr. Venkat Rao thereupon, *i. e.*, on 16th May 1902, declined to interfere. He did not however communicate this order to the appellant who consequently again petitioned him on the subject in June following. The matter was once again referred by him to the Amildar for inspection and report. About that time there was a change of Amildars, and the new Amildar after seeing the land and holding an enquiry, reported *inter alia* that the appellant had failed to substantiate his title, that the patel's denial of all knowledge of the sale was untrustworthy, that considering the initial cost involved, the price realized could not be said to be too low, but that the sale must be pronounced irregular since the extent mentioned in the several papers concerned was one acre only while including the katte the area of the number was one acre and thirty guntas. He seemed to think, judging from the difference in area, that the katte had been excluded without the formality of a phode or sub-division. On 19th November 1902, the Sub-Division Officer (Mr. Dorasami Iyer) cancelled the grant, thus superseding the orders of his predecessor. He was of opinion that the katte was useful to the public and that the sale was brought about by a fraud practised by the respondent, who as a shanbhog could not have been unaware of the proceedings of 1888 but who nevertheless suppressed the same so as to enable his darkhast to succeed. The respondent appealed on 19th December 1902, and the then Deputy Commissioner Mr. Ramanujaiengar in calling for record directed that the Sub-Division Officer's order should be held in abeyance pending the disposal of the appeal. The record was received in January 1903 but the appeal was not heard until 24th July 1905 on which date Mr. Sparkes held that the land had been properly sold and that Mr. Dorasami Iyer's order could not be sustained. Hence this appeal.

2. Government agree with the Amildars who dealt with the case and with Mr. Sparkes in holding that the appellant has not established his title to the katte in question. The katte is a neglected pond much silted up and quite out of repair. It is evident that it is of no use whatever to the villagers or their cattle. The land was not classed as kharab at the Survey Settlement, but on the contrary it was dealt with as an assessed waste with a deduction under kharab on account of the existence of a katte on it. The direction that the land should be inspected after the rains before granting it for cultivation shows that there was no intention to

refuse the grant unless the katte filled so as to useful to the public and overflowed so as to render the land unfit for cultivation. The Amildar's order of 1888 was one of questionable propriety. That the katte then contained a small quantity of water, was not a sufficient justification for the reservation of the land, nor the fact that a good bit of the land was unarable, nor that the land was an eligible one for a sandal plantation. The Amildar exceeded his powers in directing on his own responsibility the reservation of a land which had been duly assessed to revenue by the Survey Department. That being so, there was nothing to prevent the darkhast of 1900 being entertained, investigated, and disposed of on its own merits and irrespective of what had transpired in 1888. Local inspection both by the shekdar and by the Amildar coupled with the statement of a large body of the villagers, left no room for doubt that the katte was not only not private property but was also practically useless, and that the land was one which should be disposed of under the darkhast rules. The record connected with the sale as well as the subsequent correspondence further shows that the land was far from attractive in the condition in which it stood at the time of sale, that the bid obtained was a fair one, that there was no secrecy or fraud and that there was absolutely no reason why the formal confirmation of the sale should be withheld. The difference in area was made too much of in the Amildar's report of 1902. There was no need for any sub-division. The exclusion instead of the inclusion of the phut kharab in the papers was an unimportant error which in no way effected the sale or the proceedings connected with it. Government have no hesitation in holding that the sale was rightly confirmed and given effect to by the Amildar in 1901 and that it should not have been set aside by the Sub-Division Officer in 1902.

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The case however is a very simple one and there can be but one conclusion, *viz.*, that the appellant has no valid grievance and that the Deputy Commissioner's order must be affirmed.

3. The appeal thus fails and must be rejected.

No. R. 10159-*A.*—*R. M.* 110-05, *dated Bangalore, 27th January* 1906.

Copies of the above are forwarded (1) to the Deputy Commissioner of the Mysore District, together with the records received with his letter No. 321 dated the 13th September 1905, and (2) to the Survey and Settlement Commissioner in Mysore together with the village map of Desahalli village in the Mandya Taluk, received with his No. 90, dated the 20th December 1905.

Appeal No. 45 *of* 1905-06.

Appellants		*Respondent*
1. Karegowda	*Versus*	Maregowda.
2. Chennegowda		

Subject.

Claim to the pateli office of Jodi Handalagere village in the Kunigal Taluk.

The facts of the case appear sufficiently from the following :—

Decision.

The appellant's father Timmegowda and the respondent and one Chennegowda are the sons of one Karegowda who held the pateli in dispute until his death which took place some time before the year 1877. No successor having been formally appointed to the deceased, Timmegowda and the respondent divided the work between themselves and continued to perform the same until 1901 when the former died. Since then the respondent alone has been in sole possession of the office. He possesses in his own right a substantial share in the village besides paying a large amount of kandayam. Another individual who owns half the village is agreeable to his appointment, and so too his brother Chennegowda. The appellants on the other hand seem to be less respectable and efficient. Under these circumstances, the Deputy Commissioner has conferred the vacancy on the respondent who as already observed was in joint possession for some twenty-five years and in sole possession for two or three years. The family has not been deprived of the office which has only been given to the second son on the ground *inter alia* of his being in every way more competent and acceptable than the sons of the first son. Government consider that the arrangement made by the Deputy Commissioner is unexceptionable and ought not to be interfered with.

2. The appeal fails and is accordingly dismissed.

No. R. 10095—*R. M.* 143-05-4, *dated Bangalore, 25th January* 1906.

Copy of the above is forwarded to the Deputy Commissioner of the Tumkur District together with the records received with his docket No. 409, dated the 24th October 1905.

Appeal No. 45 *of* 1904-05.

Appellants	*Respondent*
	Versus
1. Lingegowda, son of Gude Lingegowda of Chikmalur village. 2. Aji Singalachar of Dodmalur village, Channapatna Taluk.	Mr. Setlur, Advocate, Bombay High Court and Agent of the Inamdar of Kudlur village, Channapatna Taluk.

Subject.

Appeal against the order of the Deputy Commissioner of the Bangalore District, declining to permit the appellants to continue to cultivate certain lands of Chikmalur village in the Channapatna Taluk, on the ground that the said lands had been treated as kharab at the time of the Survey Settlement and included into the tank bed of the adjoining Inam village of Kudlur in the said taluk.

The facts of the case appear sufficiently from the following :—

Decision.

This is a very simple case. The appellants owned certain lands in the Sirkar village of Chikmalur. At the Survey Settlement these and certain other lands were found to be within the level line of the tank of the neighbouring Inam village of Kudlur. They were thereupon classed as kharab and included in the tank bed. The appellants nevertheless continued to cultivate their lands. For so doing they were found fault with and fined. This was in 1894-95. They have since been persistently complaining against this treatment. There was a difference of opinion as to whether the lands were really within the water spread of the tank. Several inspections were made and in the result both the Revenue and Public Works officers were of opinion that though not altogether outside the water line there was nothing to prevent the lands being permitted to be cultivated as usual when no water was standing thereon. The Deputy Commissioner did not however see his way to grant the appellants any relief. Hence this appeal.

2. There can be no doubt that the lands in question are situate in a Sirkar village, and that the appellants held the same for several decades before the Survey Settlement. That being so the summary eviction of the appellants is a proceeding for which there can be no justification. Nor can they be interdicted from enjoying the lands in such manner as they might find possible so long as the right of occupancy remains unacquired from them either by private negotiation or in accordance with law.

3. Under these circumstances Government direct that the lands be allowed to remain in the appellants' undisturbed possession to be enjoyed by them as best they can and on payment of such assessment as may be fixed by the Survey Department, until duly acquired from them for inclusion in the tank bed.

No. R. 10059-59 *A.—R. M.* 486-03-10, *dated Bangalore,* 25*th January* 1906.

Copies of the above are forwarded to the (1) Deputy Commissioner of the Bangalore District, together with the records received with his letter No. 191, dated the 8th September 1904, and (2) to the Survey and Settlement Commissioner in Mysore, together with the village maps of Kudlur and Chikmalur villages received with his letter No. 83, dated the 12th December 1905.

Appeal No. 43 *of* 1905-06.

Appellant	*Versus*	*Respondent*
Komaraiya		Nagappa.

Subject.

Appeal against the order of the Deputy Commissioner of the Hassan District, dismissing the appellant's suit filed to establish his claim to the registry of the shanbhogi baraward in his name, of either of the two circles of Jakkanahalli and Agile in the Hassan Taluk.

The facts of the case appear sufficiently from the following :—

Decision.

The plaintiff (appellant) and the father of the defendant (respondent) were brothers, being the sons of one Subraya who was the registered shanbhog of Agile and certain villages until his death which took place in the year 1847. The defendant's father being the eldest son of the deceased was appointed as his successor in 1848. In consequence however of his incapacity, the office was as a matter of fact held by the appellant until the former's death which

occured in 1872. Even subsequently the appellant continued to be in possession both at the Potigi Settlement of 1882 and for twelve years afterwards. During all this time the register nominally stood in the name of the defendant's father. At the settlement above referred to, the villages in question were formed into two circles called Agile and Jakkanahalli. The appellant was doing the duties of both until 1894, when it was decided that he should hold only one namely Jakkanahalli, and surrender the other (Agile) to the respondent. The register of both was nevertheless made out in the name of the respondent alone, and the appellant was referred to a regular suit. The present suit has accordingly been instituted. It must be noted that the appellant has another or younger brother by name Seshagiraiya. Both the Assistant Commissioner and the Deputy Commissioner have dismissed the suit on the ground that Seshagiraiya is as much entitled to a share as the appellant and that the villages cannot be re-distributed so as to form three circles in place of the two constituted at the Potigi Settlement. The Deputy Commissioner differring from the Assistant Commissioner has further held that the suit is governed by the six years rule and is consequently barred by limitation. Hence this appeal.

2. The respondent's contention was that the shanbhogi in dispute was his father's self acquisition, having been reacquired by him in 1848, that is, some years after the previous officiator's dismissal in 1826. This he failed to substantiate and the authorities below have correctly found with reference to the documentary evidence on record that the shanbhogi is an ancestral and hereditary office. As already observed, the appellant was in possession of all the villages from 1872 to 1894 and he continues to this day in the enjoyment of such of them as are included in one of the two circles which for administrative convenience were constituted at the settlement of 1882. His case is then clearly distinguishable from that of the third brother Seshagiraiya whose possible claims should not have been imported into this suit and relied upon as an argument against the admissibility of the appellant's claim. Of the three brothers, the eldest was the nominal barawarddar, the second was for several decades the real officiator and the third has apparently never had anything to do either with the office or with the duties appertaining to it. That being so, there is nothing to prevent one of the two circles being adjudged by name as well as in reality to the appellant and the other being allowed to remain in the name and possession of the respondent. No question of division or re-distribution really arises in this case.

3. Having allotted one of the circles to the appellant and the other to the respondent the register should have as a matter of course followed that arrangement instead of the appellant being relegated to a regular suit in 1894. That was a needless technicality and does not prejudicially affect the claims of the appellant who continues to be in the enjoyment of the circle (Jakkanahalli) then assigned to him. All that the appellant wants is an official recognition of his status as the shanbhog of the said circle. Both the circles cannot be held by a single individual. Hence the disposal of one of them in favor of the respondent and of the other in that of the appellant. To enable the registry being made out accordingly there was really no need for a formal suit; such being the view that Government entertain of the case, it is clear that the refusal of the appellant's prayer on the ground of limitation cannot be supported.

4. Neither the existence of a third brother nor the question of limitation thus stands in the way of the appellant being registered as the shanbhog of the circle of which he is in charge.

5. For the above reasons the appeal is allowed and the relief asked for by the appellant granted.

No. R. 10083—*R. M.* 169-05-4, *dated Bangalore, 25th January* 1906.

Copy of the above is forwarded to the Deputy Commissioner of the Hassan District, together with the records received with his letter No. 434—S., dated the 23rd October 1905.

Appeal No. 46 *of* 1905-06.

Appellant	*Versus*	*Respondent*
Venkataramanaiya		Krishnappa.

Subject.

Claim to the shanbhogi office of Hebbari and other villages in the Chintamani Taluk.

The facts of the case appear sufficiently from the following :—

Decision.

This is an appeal from an order of the Deputy Commissioner declining to recognize the appellant's claim to the office of shanbhog of Hebbari and certain other villages in the Chintamani Taluk. The appellant is the son of one Venkatachellaiya who was removed from the office in 1891 on a charge of embezzlement. Considering the enormity of the offence the order of dismissal contained a direction that the family should for ever be debarred from holding the office and that a competent person unconnected with it should be appointed to succeed. In persuance of that order, the respondent was first appointed on probation and then confirmed.

2. In 1899, the case came up before Government on an appeal from one Timmarayappa who endeavoured to oust the respondent on the grounds, firstly that he had himself a preferential claim as the descendant of one Shamanna who had been removed in 1854 before the appointment of Venkatachellaiya and secondly that the respondent being the son-in-law of Venkatachellaiya and as such closely connected with his family, his appointment was opposed to the orders of 1891 and could not be supported. Government held that the respondent should be allowed to hold the office during his life time and that Timmarayappa's claim should be taken into consideration on the occurrence of a vacancy.

3. Subsequently, the respondent was for sometime improperly getting the duties of the office performed for him by his brother-in-law the present appellant. When this was brought to notice, the Deputy Commissioner in concurrence with the Assistant Commissioner in charge of the taluk directed that the unauthorized and irregular arrangement should immediately cease, and that if the respondent did not himself enter upon the duties of the office within a month the question of his displacement by Timmarayappa should receive attention. The appellant urged his own claim independently of his relationship to the respondent, but this was disallowed. He now contends that his father's dismissal and the forfeiture of the family hak were ordered on insufficient grounds and that the question should now be fully gone into and the Deputy Commissioner's order of 1891 set aside. Government decline to accede to this contention which is as unreasonable as it is belated. The record shows that the appellant's father helped himself to a large sum of Government money, that he was nevertheless very leniently dealt with in consequence of his old age, and that for years afterwards no action was taken either by him or by any member of his family to have the order then passed, cancelled. The respondent ought not to have been suffered to officiate by proxy, and to that proxy being none other than the son of the dismissed shanbhog himself, there were most serious objections. The conduct of the respondent was highly reprehensible. If tolerated, it would practically nullify the punishment awarded to the erring shanbhog and his family in 1891. The respondent seems to favor the cause of his brother-in-law the appellant. This is not as it should be, and it can under no circumstances justify the restoration to the latter of an office which so far back as 1891, he was by a distinct order passed in strict accordance with rules debarred from succeeding to. Government have no hesitation in holding that the Deputy Commissioner's order appealed from is correct and that there are no grounds for interference with it.

4. The appeal fails and is accordingly rejected.

Memo No. R. 9905—*R. M.* 97-05-5, *dated Bangalore, 24th January* 1906.

Copy of the above is forwarded to the Deputy Commissioner of the Kolar District, together with the records received with his letter No. 2837—205, dated the 30th September 1905.

Review Application No. 4 of 1905-06.

Petitioner	*Versus.*	*Counter-Petitioners*
Malera Rama *bin* Krishna		1. Subraya *bin* Krishnappa 2. Krishnappa *bin* Subraya 3. Patel Dyavaiya *bin* Krishnappa 4. Sinappa *bin* Rangappa

Subject.

Application for review of Government Order No. 1315—P. F. 152-03, dated the 20th April 1904, confirming the sale held for arrears of revenue of lands Survey Nos. 37 and 38 of Attikodagi village in the Koppa Taluk.

Order.

The petitioner was the purchaser of a portion of the lands in question from the 2nd counter-petitioner. Though thus interested in the continuance of the occupancy, he failed either to obtain a transfer of the khate in his name or to get his name entered in the special register maintained for the purpose nor did he take steps to see that the assessment did not fall into arrears. Though not entitled to a notice, it is evident from the record that he had ample notice of the sale proceedings from first to last, of which however he wilfully failed to take advantage. His subsequent assertion that he had been misled into the belief, that what was being forfeited and sold was some other land of the khatedar in which he possessed no interest, was clearly an afterthought and must be rejected as wholly incredible. He would not meet the demand though he had an abundant opportunity of doing so. On the contrary he wished it to be satisfied either by his vendor the 2nd counter-petitioner or by his mortgagee the 4th counter-petitioner. No such payment having been made, the lands were sold in strict accordance with law. The petitioner is not entitled to have that sale set aside. That being so, Government see no reason to reconsider the order sought to be reviewed. This application is therefore rejected.

Memo No. R. 9932—*R. M.* 48-05-4, *dated Bangalore 24th January* 1906.

Copy to the Deputy Commissioner of the Kadur District together with the records received with his docket No. 188, dated the 1st September 1905.

Appeal No. 50 *of* 1905-06.

Appellants	*Versus*	Respondent
1. Sultan Sabi 2. Ismail Sheriff 3. Syed Mustan 4. Davud Khan Sabi and few other raiyats below Kolar Amanikere.		Munivenkatappa.

Subject.

Appeal against the order of the Deputy Commissioner of the Kolar District, directing the grant of Survey No. 28 (kharab) of Kolar kasba to the respondent in lieu of some other lands of his submerged by the raising of the weir of Kolar Amanikere, the appellants contending that it should be reserved for public use.

The facts of the case appear sufficiently from the following :—

Decision.

Certain lands belonging to the respondent were resumed from him and included in the bed of the Kolar Amani tank. Instead of compensation the respondent asked for and obtained in exchange a small bit of kharab land so far back as July 1901. This land was duly assessed by the Survey Department in February 1902. The respondent has since been in possession. Some three and a half years after the grant of the land to him, the appellants objected to the grant on the ground that there was a pond on the land which was useful not only to the travelling public but also to themselves. The Deputy Commissioner (Mr. Puttanna Chetty) declined to interfere with the grant which had been made by his predecessor (Mr. Carr) in 1901. Hence this appeal.

2. The so called pond or well is a mere pit on account of the existence of which this small piece of land was shown as kharab or unassessed waste in the Survey records. It is evident from the correspondence with the Survey Department that the lands in the occupancy of the appellants are not entitled to be irrigated from the water of the pond. That being so, it is not clear how the appellants could be said to have any valid grievance. Nor does there appear to exist much force in the allegation that the cultivation of the land would prejudicially affect the travelling public. All possible objections were fully considered by Mr. Carr before he granted the land to the respondent and got the Survey Department to fix an assessment on it No interference with the grant thus made and given to, is at this distance of time either called for or justifiable. In reporting upon the case Mr. Puttanna Chetty favors a resumption of the land from the respondent and the payment to him of compensation for the lands acquired from him and included in the water spread of the tank. Government are unable to agree with him either as to the necessity or as to the desirability, of reopening a question decided by Mr. Carr more than four years ago and of upsetting an arrangement which has since been in force. Neither public interests nor private, warrant any action of the kind suggested.

3. For the foregoing reasons Government hold that this appeal is not entitled to succeed and must accordingly be dismissed.

No R. 9823—*R. M.* 248-05-2, *dated* 23*rd January* 1906.

Copy of the above is forwarded to the Revenue Commissioner in Mysore together with the records received with his letter No. 4250, dated the 8th November 1905.

Appeal No. 52 *of* 1905-06.

Appellant	*Versus*	Respondent
Venkatramaiya		Rudraiya.

Subject.

Claim to the pateli office of Damarajanapalya, a Dakle village of Navilakurki in the Koratagere Sub-Taluk.

The facts of the case appear sufficiently from the following decision :—

Decision.

The respondent has long been the Hakdar Patel of the village of Damarajanapalya, having obtained the office in succession to his father so far back as the year 1873. The appellant is the patel of Navilakurki. At the Survey Settlement the former seems to have been treated as a Dakhala village and the latter as the Asli village. This did not, however, affect the parties each of whom continued until 1903 in the undisturbed possession of his own village. In that year, however, on the strength of the decision passed by Government in Appeal No. 22 of 1901-02, the Deputy Amildar compelled the respondent to surrender charge of his village to the appellant, The Deputy Commissioner interfered and set aside the Deputy Amildar's order on the ground that it had been passed under a misapprehension. The appellant now contests the correctness of the Deputy Commissioner's order. Admittedly he has no right to the office in dispute. All that he contends is that the Potgi Rules and standing orders entitle him to the charge of both the villages.

2. The decision relied upon by the Deputy Amildar does not apply. That was a case between two persons neither of whom was the representative of the original hakdar. Both were the nominees of the Deputy Commissioner, and Government held that the arrangement made by that officer was a clumsy one which could not be upheld. There was no question of hak and no body was deprived of any hak. The present case is thus clearly distinguishable from that one. For a case of this kind there is ample provision in para 2 of the Proceedings of Government No. 10267-75—R. 1055, dated the 3rd January 1894. There is nothing in the Potgi Rules in support of the appellant's contention that the respondent's hak has extinguished by the treatment of his village as a Dakhala village by the Survey Department. The case of patels differs materially from that of shanbhogs, the former being governed by the Proceedings of 3rd January 1894 above referred to and the latter by the principles laid down in Proceedings No. 11829-37—Pet. F. 35-94, dated the 24th January 1905. It is evident that the appellant has no right to oust the respondent and that consequently he has no valid grievance. It is true that both are small villages but this *per se* is no reason why one of the hakdars should be compelled to part with his hak in favour of the other. To both being appointed patels of both the villages with power to officiate by rotation, the appellant does not agree, and no other arrangement satisfactory to both the parties is feasible than the continuance of the one which has existed from time immemorial.

3. The Deputy Commissioner's order is upheld and this appeal is dismissed.

No. R. 9835—*R. M.* 794-04-4, *dated Bangalore, 23rd January* 1906.

Copy of the above is forwarded to the Deputy Commissioner of the Tumkur District, together with the records received with his letter No. 408, dated the 24th October 1905.

B. K. VENKATA VARADA IYENGAR,
Secy. to Govt., Gen. & Rev. Dept.